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Rhoads v. State Respondent's Brief Dckt. 43490

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JAMES GERALD RHOADS,)	
)	No. 43490
Petitioner-Appellant,)	
)	Ada County Case No.
v.)	CV-2014-22949
)	
STATE OF IDAHO,)	
)	
Defendant-Respondent.)	
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BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

James Gerald Rhoads appeals from the district court's order summarily dismissing his petition for post-conviction relief.

Statement Of Facts And Course Of The Proceedings

According to the district court's summary dismissal order, the underlying facts and proceedings leading to this appeal are as follows (with bracketed references to the current record):

On January 19, 2012, Defendant was convicted by a jury of the crimes of felony DUI and felony Operating a Motor Vehicle without the Owner's consent. On May 8, 2012, the Court sentenced Defendant to maximum concurrent terms of 10 years on the DUI (four years fixed) and five years on the Operating without Consent charge (four year[s] fixed). Said terms were to run concurrently with each other and with the sentence imposed in Ada County Case Number CRFE-2006-0000124. Thereafter, Defendant filed an Idaho Criminal Rule 35 Motion for Reconsideration of Sentence and pursued a direct appeal, both of which were unsuccessful.

On December 9, 2014, Petitioner filed a Petition and Affidavit for Post-Conviction Relief and a Motion and Affidavit in Support for Appointment of Counsel. [R., pp.5-9, 15-20.] On December 24, 2014, the Court issued an Order Appointing Counsel. [R., pp.22-24.] On February 24, 2015, Petitioner, through counsel, filed a Memorandum in Support of Petition for Post-Conviction Relief along with an Affidavit of James Rhoads. [R., pp.74-86.] On March 2, 2015, Petitioner, through counsel, filed an Amended Petition for Post-Conviction Relief along with an Affidavit. [R., pp.81-90.] The State filed an Answer on March 25, 2015. [R., pp.91-95.] The State subsequently filed the present Motion for Summary Disposition. [R., pp.106-107.]

(R., p.133.) The state filed a brief in support of its motion for summary disposition (R., pp.108-117), Rhoads filed a brief in response (R., pp.118-124), and the state filed a reply (R., pp.125-130). On July 10, 2015, the district court held a hearing on the state's motion for summary disposition (see generally 7/10/15 Tr.), and, at the end of the

hearing, took the matter under advisement (*id.*, p.37, Ls.13-19). On August 3, 2015, the district court entered its Order Granting Motion for Summary Disposition (R., pp.132-149) and a Judgment (R., pp.150-151), summarily dismissing Rhoads' post-conviction petition with prejudice. Rhoads filed a timely notice of appeal. (R., pp.152-154.)

ISSUE

Rhoads presents the following issue on appeal:

(1.) Did the district court abuse its discretion when it had denied Mr. James, [sic] Rohads [sic] an evidentiary hearing based on the issues of ineffective assistance of counsel and on all four (4) issues and claims in his petition for post conviction relief.

(Appellant's Brief, p.5 (capitalization modified).)

The state phrases the issue on appeal as:

Has Rhoads waived his argument on appeal because he has failed to present any argument and authority challenging the summary dismissal of his post-conviction petition? Alternatively, has Rhoads failed to establish error in the summary dismissal of his petition for post-conviction relief?

ARGUMENT

Rhoads Has Waived His Argument On Appeal Because He Has Failed To Present Any Argument And Authority Challenging The Summary Dismissal Of His Post-Conviction Petition; Even If Not Waived, Rhoads Has Failed To Establish Error In The Summary Dismissal Of His Petition For Post-Conviction Relief

A. Introduction

This Court should decline to consider Rhoads' challenge to the district court's summary dismissal of his post-conviction petition because he has waived such challenge by failing to present any argument to support it; additionally, although he cites supportive cases, he has not explained what they hold or how they are relevant on appeal. Alternatively, Rhoads has failed to establish the district court erred in summarily dismissing his petition.

B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of material fact exists based on the pleadings, depositions and admissions together with any affidavits on file." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. The Court Should Decline To Consider Rhoads' Claims Because They Are Unsupported By Argument And Authority

Rhoads' argument on appeal is not actually "argument." Rather, the entirety of Rhoads' argument reads:

- (B). The district court had abused its discretion when it had denied Mr [sic] James Gerald, [sic] Rhoads an evidentiary hearing based on ineffective assistance of counsel and on all four (4) claims in his petition for post conviction relief.

- | | | |
|----|---|-------|
| 1. | Ineffective assistance of counsel. | A(1.) |
| 2. | Failure to cross examine. | (A). |
| 3. | Failure to call Shawn Holmes/admit photographs. | (B). |
| 4. | Petitioners [sic] decision to not testify. | (C) |
| 5. | Vidio [sic] redactions. | (D.) |

(Appellant's Brief, p.6.)

As seen above, Rhoads makes no argument apart from the conclusory assertion that the district court abused its discretion by denying him an evidentiary hearing on his claims. He fails to present any argument about how the district court may have erred. Although Rhoads lists eight cases under "Case's [sic] and Law" in a section preceding the "Argument" section of his brief, he provides no argument or explanation as to how any of the cases applies to his challenge to the court's summary dismissal of his petition. (See Appellant's Brief, p.3.)

"When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered." State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Although Rhoads replicates the claims he set forth in his post-conviction petition, he has failed to cite any argument in support of his claims and has offered absolutely no explanation how any of the cases he cites supports his general argument that the district court abused its discretion in granting summary dismissal of his claims. (See Appellant's Brief.) Accordingly, this Court should decline to consider the merits of any of his arguments and/or claims.

D. Even If This Court Considers The Merits Of Rhoads' Challenge To The District Court's Summary Dismissal Order, He Has Failed To Establish Any Error

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief in response to a party's motion or on the court's own initiative. "To

withstand summary dismissal, a post-conviction applicant must present evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof.” State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is subject to summary dismissal pursuant to I.C. § 19-4906 “if the applicant’s evidence raises no genuine issue of material fact” as to each element of petitioner’s claims. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. While a court must accept a petitioner’s un rebutted allegations as true, the court is not required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). If the alleged facts, even if true, would not entitle the petitioner to relief, the trial court is not required to conduct an evidentiary hearing prior to dismissing the petition. Id. (citing Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990)). “Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law.” Id.

In its Order Granting Motion for Summary Disposition (R., pp.132-149), the district court articulates the applicable legal standards and sets forth, in detail, the reasons Rhoads failed to establish a genuine issue of material fact on any of his claims. The state fully adopts the analysis and reasoning in the district court’s Order Granting Summary Disposition as its basis for affirming the summary dismissal of Rhoads’ post-

conviction claims, and incorporates that Order (attached as Appendix A) into this brief as if fully set forth herein. Apart from claiming that the district court abused its discretion by denying him an evidentiary hearing, Rhoads does not challenge any of the court's specific findings or legal conclusions (see generally Appellant's Brief), and he has otherwise failed to establish the district court erred in summarily dismissing his petition.

CONCLUSION

The state respectfully requests this Court affirm the district court's order summarily dismissing Rhoads' petition for post-conviction relief.

DATED this 26th day of October, 2016.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of October, 2016, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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BOISE, ID 83707

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd